

QUESTION 1

Priscilla is the classic example of a Trust Fund baby. After graduation from finishing school she became a tour guide in the local art museum. The Trust Fund produces several hundred thousand dollars a year and will pay over to Priscilla twenty million dollars when she reaches the age of forty-two.

While working at the art museum she met Shifty who had janitorial duties at the museum. Later he was terminated for sleeping on the job. Shifty was forty-six when they fell madly in love. They were married when he was forty-seven years old and she was twenty-seven. There are three children of the marriage and no pre-nuptial agreement. Upon marriage, with Priscilla's Trust Fund money they purchased a three story condominium on Ocean Drive in Newport, Rhode Island for eight million dollars with no mortgage. The property was purchased in both of their names as tenants by the entirety.

They had three children in seven years.

After the marriage, Shifty who was unemployed at the time continued to be unemployed. Priscilla took a part time job at the museum and spent most of her time taking care of the children. When she could not take care of the children a nanny came in and took care of the children.

Upon purchase of the condominium Shifty converted the third floor into a semi-clubhouse. He had a pool table, a bar set up, and nightly he would play pool and cards with four of his friends. He would sleep every day until noon or one o'clock, before commencing a card game or a game of pool. He and his friends would occasionally go out and hit the bars during the week. He also had at least three affairs during the marriage.

Finally after twenty years of this behavior, Priscilla commenced divorce proceedings against Shifty. However Shifty insisted that he receive one-half the value of the condominium and that he receive alimony because of his age he was unable to provide support. He didn't even qualify for Social Security. Priscilla on the other hand took the position that the purchase of the condominium was with trust fund money and because of that and Shifty's conduct during the marriage he should receive nothing. Thus the condominium and its contents should be turned over to Priscilla. She also claimed that since he did not work and because of his behavior he should receive no alimony. The only two issues before the court are alimony and equitable distribution of the condominium.

What would be your decision?

Your discussion should include the applicable criteria for alimony and equitable distribution.

QUESTION 2

Your neighbor, Nathan, visits you about his father, Frank, who had a severe stroke three weeks ago. Thanks to the work you did a year ago, the power of attorney, health care power of attorney, and will are in good order. However, Nathan advises you that he found among his father's records a large file concerning a trust established by Frank's grandfather's will naming Frank as trustee. Frank has five children and one sister, Sharon, who has two children. Sharon is Frank's attorney-in-fact.

As best as Nathan can tell:

1. The trust does not name a successor trustee to Frank.
2. The trust reads "The trustee shall use the income and principal of this trust to provide the health care and education of my descendants. Upon the death of my grandchildren, Frank and Sharon, the trust shall be distributed *per stirpes* to Frank's and Sharon's issue."
3. In a letter to Frank dated four ago, Nathan's cousin, Colin, complains bitterly that a good amount of the trust funds have been spent on Frank's family. Andy wants the trust to be split into two pieces immediately, with a different trustee for Sharon's family. Further, he wants the trust division to be made 50-50 taking into account all previous expenditures for either family.

Please advise Nathan on procedural and substantive issues raised by these facts.

QUESTION 3

Godfrey is a Rhode Island resident, age 84. His wife died seven years ago. His daughter, Alyssa, lives in the Cayman Islands. Godfrey has spent winters with her family. His son, Scott, is an executive for an international manufacturing company, now assigned to Singapore for two years. Last summer in Singapore, Godfrey became acquainted with a number of people at the bridge club in his son's neighborhood.

Yesterday, you received a phone call from Scott advising you that his father, Godfrey, has just died. Godfrey's will and power of attorney had been prepared by you 10 years ago. You arrange to meet with Scott and Alyssa in 10 days, and then leave for vacation.

You return the morning of the meeting. Although it is only 7:15 a.m., Scott and Alyssa are waiting outside your office door. They tell you that a month before his death their father had married a 49-year-old woman from Singapore who, with her 17-year-old and 19-year-old daughters, is now living in Godfrey's house. The checking account upon which Godfrey had placed Scott's and Alyssa's names has been closed. The bank branch manager, who had gone to school with Scott's son, told them there existed a large joint account with the Singapore woman. The safe deposit box was still in their three names, so Scott and Alyssa brought you the deed to the house, the will prepared by you, Army discharge papers, birth certificate, etc. and stock certificates in Godfrey's name worth \$900,000. Both of them insist that they had talked to their father weekly and that he never mentioned his Singapore family. Everyone in town from the minister at Godfrey's funeral to his bridge-playing buddies have all remarked that while Godfrey's wife seems pleasant and kind, they had been surprised when told that Scott and Alyssa could not make it to the wedding.

What advice will you give Scott and Alyssa as to all legal issues presented by this set of facts?

QUESTION 4

Skip, Marc and Jacques are general partners in a Providence, Rhode Island travel agency specializing in cruise travel called Cruises R Us. There is no written partnership agreement. The usual way in which they carry out their business is that Skip is responsible for recommending and booking Mediterranean cruises, Marc is responsible for recommending and booking Pacific cruises, and Jacques is responsible for recommending and booking Caribbean cruises.

Skip, Marc and Jacques all get along well, but their lawyer is constantly pressing them to “start acting like partners, not individual entrepreneurs.”

Skip, Marc and Jacques believe that in order to best advise their clients they need to “try out” various cruise lines, ships and ports of call so that they can make informed suggestions about the best cruises to take. Traditionally the costs of these trips have been defrayed by Cruises R Us.

1. In the middle of a particularly cold winter, Skip decides that he wants to “try out” a cruise on the new ship Coconut which cruises to the British and American Virgin Islands. Without consulting with his two partners, Skip books a terraced stateroom suite on the Coconut and departs for a two week cruise. When the bill comes in from Palm Tree Cruise Lines for Skip’s two week voyage on the Coconut it finds its way to the partnership bookkeeper who refuses to pay it. Skip booked the cruise using a “Cruises R Us” credit card.

Is the partnership responsible for paying for the cruise?

2. Marc is approached by a representative of South Sea Cruise Lines, one of a number of cruise lines with which Marc books clients for Pacific cruises. The South Sea rep tells Marc that if Cruises R Us will book all of their Pacific clients on South Sea cruise ships, and if those bookings equal over one hundred per year, South Sea will kick back to Cruises R Us ten percent of the cost of each booking over one hundred. Marc knows that some of the cruise lines which are competitors of South Sea also offer Mediterranean cruises and Caribbean cruises. But he decides the deal is too good to pass up even though he knows that some customers will need to be talked out of cruises to other destinations or on other cruise lines to make the one hundred plus bookings. The South Sea rep asks Marc if he needs to talk to his partners and Marc simply says “no.” He signs the contract with South Sea using his own full name, but does not recite the name of the partnership. Representatives from competing cruise lines find out about this “deal” and protest to Skip and Jacques.

Is Cruises R Us bound by Marc's contract with South Sea Cruise Lines?

3. Feeling stressed by the arduous responsibilities of being a partner in Cruises R Us, Jacques, books a three week Caribbean vacation cruise on the cruise ship Shark Bite. While disembarking for a tour Jacques, after having too many pina coladas, inadvertently bumps one of his fellow passengers causing that passenger to fall off the gang plank onto the dock below, suffering serious injury as a result. After the Shark Bite returns to shore and following completion of the cruise, the injured passenger files suit in Rhode Island Superior Court, not only against Jacques but also against Skip, Marc and Cruises R Us.

Who of these four (4) Defendants would be liable for the passenger's injuries?

Please confine your responses to Rhode Island statutory and case law on partnerships.

QUESTION 5

**Please assume the following facts and
answer the questions at the end of the narrative**

You have been retained to defend Henry and Hillary Homeowner in an action brought against them by Daniel Deliveryman. You meet with the Homeowners to discuss the matter. They tell you the following:

Back in April, 2005, the Homeowners decided that their charming but shabby Victorian house was in serious need of restoration. They wanted the house to be restored with quality and authenticity. Being completely unskilled in carpentry and home design, they hired an architect to design and oversee the work to completion.

The renovations to the house included a new kitchen and significant work on the exterior of the house. The Homeowners were particularly concerned with restoring the beautiful wraparound porch and elegant front stairway of their house. To accomplish this specific task, the architect recruited a carpenter to remove the old front porch and stairway, and to build a new porch and stairway in keeping with the architect's elegant design.

The new porch and stairway had just been completed. The Homeowners were very pleased with its appearance. However, they were using only the rear entrance to the house until the work was complete.

Interior renovations were in progress when the architect received a telephone call to schedule delivery of the new kitchen cabinets to the house. Delivery was set for the following afternoon, when the architect planned on being at the house while the Homeowners were at work.

Daniel Deliveryman arrived at the house at the appointed time. As he climbed the new front stairway and reached the top step, the stairway collapsed under him. He injured his back

quite severely and has been unable to work since that time, prompting his claim against the Homeowners which you are now to defend.

The Homeowners were very upset that this incident occurred. They hired a structural engineer to examine the stairway and figure out why it collapsed. The engineer told them that the stairway had not been properly affixed to the house, and that its collapse was inevitable.

Who (if anyone) may be held liable for Mr. Deliveryman's injuries?

Is additional information required to answer this question?

Please state your reasons for your answer.

Note: Please do not address the procedural aspects of defending this claim.

QUESTION 6

**Please assume the following facts and
answer the questions at the end of the narrative**

It is February 2, 2006. Your client Larry Landowner has appeared at your office, very anxious to see you. Larry is the owner of a small office building in Providence. He occupies one of the offices in the building, and leases the other three offices to tenants.

Larry tells you that two days ago, a man appeared at his office and handed him some papers. You look at the papers and immediately determine that Larry was served with a summons and complaint by a local sheriff. The plaintiff in the complaint is one Curt Clumsy. Larry is the only defendant. Mr. Clumsy alleges that on December 1, 2002, he was at Larry's building to see one of the tenants there. He further alleges that was injured when he slipped and fell on ice on the front stairs, a dangerous condition caused by Larry's negligence.

Larry tells you that he does not believe that he is responsible for this incident. He has an agreement with one of the tenants who assumed the duty of snow and ice removal at the building in consideration for a reduction in rent. Larry believes that if anyone is responsible for the incident, it should be that tenant.

Larry also tells you that, due to cash flow problems about three years ago, he had stopped paying the insurance premiums for his policy on the building, and that his insurance company cancelled his policy until it was later reinstated. He believes that his insurance policy was not in effect at the time of the incident.

Reluctantly, Larry admits that he is acquainted with Mr. Clumsy, who appears at the building regularly to see one of the tenants. Larry doubts the legitimacy of that tenant's business, and although he does not know for certain, he suspects that the tenant and Mr. Clumsy are involved in unlawful activity. In mid-November, Larry confronted Mr. Clumsy in the parking

lot behind the building. He asked Mr. Clumsy why he was on the premises, to which Mr. Clumsy responded by shoving Larry to the ground. On three occasions since that time, Larry's car has been vandalized while parked in the lot -- all occurring on days when Mr. Clumsy was seen in the building. The most recent of these incidents occurred last week, when Larry found a note from Mr. Clumsy threatening that Larry "would regret it if he asked any more questions."

You agree to represent Larry on this claim. After he leaves your office, you walk across the street and check the court file at the Providence County Superior Court clerk's office, where the complaint was filed. Your examination of the file reveals that the complaint was filed on December 23, 2005. You return to your office to get to work on this matter.

What must you do to protect/advance Larry's interests?

Be as specific as you can as to what steps you must take.

Note: Please do not address the merits of Mr. Clumsy's claim of negligence.

QUESTION 7

Realco, a real estate development company, recently purchased property in West Warwick to build a first-class casino and hotel. After receiving the necessary approvals from state and local government officials, Realco approached the Fast-Built Construction Company (“Fast-Built”) to serve as general contractor on the project. Fast-Built’s president and sole stockholder, John Hammer, represented to Realco that Fast-Built was ready, willing and able to do the job. Hammer represented to Realco that Fast-Built had successfully built numerous casinos and hotels throughout the United States and had the ability to achieve Realco’s goal of a first-class luxury casino and hotel in West Warwick. On the basis of Hammer’s representations, Realco hired Fast-Built to serve as the general contractor.

The parties entered into a standard construction contract that required Fast-Built to complete the casino and hotel by a certain date. The contract stated that Hammer would not be liable for any of Fast-Built’s debts or obligations. Thereafter, the project began. In the early going, the project went smoothly. However, half way into the project, Fast-Built began to have cash-flow problems. Soon, the subcontractors walked off the job after complaining they were not being paid and the project came to a halt. When Realco approached Hammer, he informed the hotel that Fast-Built was out of money and could no longer continue on the project.

Realco hired a private investigator who learned that Fast-Built was in good standing with the Rhode Island Secretary of State’s office, had filed the appropriate governmental forms necessary to operate and was capitalized with \$1,000. The investigator learned that Hammer, as owner and sole stockholder of Fast-Built, never took a salary but instead would take any money that Fast-Built received as income and deposit it into his own personal accounts, leaving only sufficient funds in Fast-Built’s bank accounts to pay expenses. When Fast-Built’s expenses

sometimes exceeded its income, Hammer would loan money to Fast-Built to meet its expenses. The last loan, of \$50,000 from Hammer to Fast-Built, was paid back to Hammer and thereby rendered Fast-Built unable to pay its debts as they came due. However, the investigator also learned that Fast-Built always followed all corporate formalities, and that any transfers of money or loans were appropriately recorded in Fast-Built's corporate records as authorized by its president, Hammer himself. All proper loan documents were prepared and duly signed as well.

Lastly, the private investigator learned that Hammer was the owner and sole shareholder of another construction company, the Upright Construction Company ("Upright"), which had millions of dollars in the bank. Upright operated separately from Fast-Built, except that Hammer owned and controlled both companies. According to the investigator, both Fast-Built and Upright shared the same offices, had the same president, Hammer himself, and routinely transfer funds between themselves.

1. Discuss and evaluate the bases on which Realco might recover damages from Hammer.
2. Discuss and evaluate the bases on which Realco might recover damages from Upright.

QUESTION 8

Zipco was in the business of manufacturing specialized chips (“Z chips”) that computer manufacturers used to make high-performance laptops for the United States Government. In its promotional material, Zipco represented that any laptops containing its Z chips would perform better than conventional laptops.

Chipco, a start-up Rhode Island manufacturer of laptops, read Zipco’s promotional material and approached Zipco about purchasing a year’s supply of Z chips. After Zipco and Chipco had discussions about Chipco’s specific manufacturing needs, Chipco issued a purchase order to Zipco for a year’s supply of Z chips. The purchase order stated in part as follows:

Please enter our order for the amount of Z chips set forth below. The parties agree that any dispute arising under or relating to this agreement shall be filed in the Rhode Island Superior Court and will be governed by the laws of the State of Rhode Island.

Zipco responded by shipping the requested amount of Z chips with a written confirmation of the order which stated in pertinent part:

Zipco warrants that Z chips will be replaced if defective in manufacture. The foregoing shall be the sole and exclusive remedy for any defects in Z chips. The parties agree that any dispute arising under or relating to this agreement shall be referred to binding arbitration pursuant to the rules of the American Arbitration Association.

Thereafter, Chipco began manufacturing laptops and sold them to the United States Department of Defense, among other agencies. However, it quickly became apparent that Chipco’s laptops did not work with the high-performance as advertised. Every agency of the United States Government immediately experienced problems with Chipco’s laptops and all of them had to be recalled. Chipco’s scientists later determined that the Z chips, the key ingredient in the laptops, had failed to meet product specifications.

Chipco filed a lawsuit against Zipco in Rhode Island Superior Court. Chipco is seeking a refund of the money it spent to purchase the Z chips, among other damages. In response to the lawsuit, Zipco has moved to dismiss the lawsuit on the basis of the arbitration clause in the written confirmation it sent with the Z chips.

1. Will Chipco's claims have to be arbitrated?
2. Will Zipco be able to enforce the sole and exclusive remedy provision in the written confirmation Zipco sent to Chipco when it shipped the Z chips?

QUESTION 9

On a recent wintry afternoon, Henry Handiman, a resident of Providence, Rhode Island, who was undertaking a large home improvement project, traveled to the Giant Home Warehouse to purchase goods to use in his project. Giant Home Warehouse occupies a large lot on Route 6, Seekonk, Massachusetts, on which is located a building used as the store and an abutting parking lot used for customers' parking at the store. Giant occupies the premises under a lease which provides that it shall be responsible for maintaining the premises in a reasonably safe condition for the purpose of conduct of a retail business.

After making purchases at the store, Henry emerged from the main door at the front of the store, and noticed that, while he had been inside, a heavy snow and sleet storm had occurred and was continuing. Henry noticed a truck bearing the logo of the store approached and dumped a load of sand and rock salt on the parking lot to offset the effects of the snow and sleet. When the truck passed, Henry, carrying two bags of supplies that he had purchased, stepped onto the parking lot. At that time, he stepped onto a chunk of rock salt dropped by the store's truck, fell and sustained serious injuries.

Henry has commenced a civil action in Providence County Superior Court alleging negligence on the part of Giant Home Warehouse. The issue has arisen between the parties as to whether the comparative negligence law of Rhode Island or Massachusetts should apply. Henry is advocating the application of Rhode Island law, pure comparative negligence, while Giant Home Warehouse is advocating the application of Massachusetts law with its 50 percent threshold for recovery.

Please indicate which party's position will likely prevail in the pending civil action and discuss your reasons for your conclusion.